GOVERNMENT OF INDIA
LAW , JUSTICE AND COMPANY AFFAIRS
LOK SABHA

STARRED QUESTION NO:441
ANSWERED ON:23.08.2001
NON-MEMBERS IN THE COUNCIL OF MINISTERS
KANTI SINGH;RAGHUVANSH PRASAD SINGH

Will the Minister of LAW , JUSTICE AND COMPANY AFFAIRS be pleased to state:

(a) whether the Government have made any study on the use of Articles 75(5) and 164(4) of the Constitution which permit a non-Member in the Council of Ministers by the Centre and the State Governments respectively;

(b) if so, the details thereof;

(c) whether the Union Government have issued any guidelines on the use of Article 164(4) for observation by the State Governments; and

(d) if so, the details thereof?

Answer

MINISTER OF LAW, JUSTICE & COMPANY AFFAIRS AND SHIPPING (SHRI ARUN JAITLEY)

(a) & (b) Yes, Sir. The Supreme Court of India in its judgment dated August, 17, 2001 in S.R. Chaudhury vs State of Punjab and Ors. has clearly indicated that no one can be reappointed under 164(4) without getting elected to the Legislature. The Court has observed that it was not the intention of the Founding Fathers of the Constitution that a person should continue to be a Minister without being duly elected, by repeated appointments, each time for a period of six consecutive months. Further, such an appointment would be unacceptable in any parliamentary system of Government. Article 75(5) being pari materia with article 164(4) of the Constitution, the position would be the same in the case of article 75(5) of the Constitution.

(c) Ministry of Home Affairs has informed that no guidelines have been issued regarding the use of article 164(4).

(d) Does not arise.